<u>REMARKS</u>

Claims 16-42 and 43-48 are pending. Claims 16-42 and 43-48 have been

rejected. Claims 1-15 and 43 were previously canceled without prejudice. All claims

have been amended. No new matter has been added.

<u>35 USC § 102(e) REJECTIONS</u>

Claims 16-48 have been rejected under 35 U.S.C. § 102(e) as being anticipated by

Downs et al., U.S. Patent No. 6,226,618 B1.

With reference to these claims, the Examiner is respectfully directed to

independent Claim 16 which recites that an embodiment of the present invention is

directed towards:

> A method, comprising:
> at a first node in a network, distributing digital content to a second
> node in said network, said digital content representing at least a portion of
> a media stream, at least a portion of said digital content being encrypted
> by a first encryption key, said distributing comprising:
> (a) receiving a first decryption key, said first decryption key being
> encrypted by a second encryption key, said second encryption key being
> pre-assigned to said first node;
> (b) decrypting said first decryption key using a second decryption
> key associated with said second encryption key, said second decryption
> key being preassigned to said first node;
> (c) decrypting said digital content using said first decryption key;
> (d) re-encrypting at least a portion of said digital content using a
> re-encryption key.

Independent claims 32 and 48 recite similar limitations. Claims 17-31 are dependent

upon Claim 16, and recite further features of the claimed embodiments. Claims 33-42

and 44-47 are dependent upon Claim 32, and recite further features of the claimed

embodiments.

The rejection suggests that Downs recites every limitation of the claimed embodiment. Applicants respectfully disagree. Further, Applicants assert that the rejection fails to set forth a *prima facie* case under 35 USC § 102(e).

Applicants understand Downs to purport to describe a system for secure distribution of data, involving the use of public/private key pairs (see, e.g., Abstract, Col. 17-19 (Process Flow Description)). While Applicants acknowledge that Downs discusses encryption keys, digital content, and decryption/encryption of encryption keys, Applicants assert that Downs does not describe, at a network node, (a) receiving a first decryption key, said first decryption key being encrypted by a second encryption key, said second encryption key being pre-assigned to said first node; (b) decrypting said first decryption key using a second decryption key associated with said second encryption key, said second decryption key being preassigned to said first node; (c) decrypting said digital content using said first decryption key; and (d) re-encrypting at least a portion of said digital content using a re-encryption key, as claimed.

The rejection suggests that the independent claims do not require that the same network node be involved in both the decryption of the encrypted decryption key and the decryption of the content. Applicants respectfully disagree. Claim 16 recites "at a first node in a network, distributing digital content to a second node in said network. . . said distributing comprising" a number of actions. As described in the claim, these actions all occur as part of "distributing" the digital content, and "distributing" occurs at the first

node.

The rejection also asserts that Downs teaches or suggests decryption of the encrypted decryption key, decryption of the content, and re-encryption of the content, relying on Downs' description of the utility of watermarking. Applicants respectfully disagree.

Watermarking, as described by Downs, occurs in two locations: an initial watermark is inserted into the content by the content proprietor (col. 7, ln. 57-61), and a second watermark is embedded in the Content at the End-User Device to identify the purchaser and device authorized to play the copy of the content (col. 7, ln. 61-65). The rejection suggests that the content can only be properly "used," if the process described in the claimed embodiments is followed. Again, Applicants respectfully disagree.

Applicants do not read Downs as teaching or suggesting that the Content Provider (as a hypothetical "first node"), before inserting the initial watermark, must (a) receive a first decryption key, said first decryption key being encrypted by a second encryption key, said second encryption key being pre-assigned to said first node; (b) decrypt said first decryption key using a second decryption key associated with said second encryption key, said second decryption key being preassigned to said first node; and (c) decrypt said digital content using said first decryption key; insert the initial watermark, and then (d) re-encrypt at least a portion of said digital content using a re-encryption key, as claimed.

Moreover, Applicants do not read Downs as teaching or suggesting that the end user/end user player/end-user player application (as a hypothetical "first node") must re-encrypt at least a portion of said digital content using a re-encryption key, *as part of distributing the digital content to a second node*, as claimed.

Further, the rejection provides the sweeping assertion that Downs "clearly encompasses the claim limitations, as broadly interpreted by the examiner." While the rejection notes that Downs involves secure electronic distribution of content, encryption keys, and users on a network, the rejection does not offer to equate specific elements of Downs with the limitations recited by the claimed embodiments, nor does the rejection show that the elements of Downs are arranged as required by the claimed embodiments, as is necessary to establish a *prima facie* case for rejection under 35 USC 102(e) (see MPEP § 2131). Applicants respectfully request that the rejection be withdrawn. If the rejection is maintained, Applicants respectfully contend that the rejection must recite the elements in Downs that are deemed to encompass the limitations of the claimed embodiments.

Applicants read § 2123 of the MPEP, and especially the case law cited therein for support, as standing for the proposition that nonpreferred, alternative, or even disfavored embodiments may be considered as prior art. Applicants do not read this section as abrogating the requirements for establishing a *prima facie* case for rejection under 35 U.S.C. 102(e), as discussed above and in MPEP § 2131.

As such, Applicants contend that Downs fails to teach or anticipate the

embodiments recited in Claims 16, 32, and 48. Therefore, Applicants respectfully assert

that Claims 16, 32, and 48 overcome the grounds for rejection under 35 U.S.C. 102(e),

and are in condition for allowance. Accordingly, Claims 17-31, dependent upon Claim

16, and Claims 33-42 and 44-47, dependent upon Claim 32, overcome the basis for

rejection under 35 U.S.C. 102(e), as they are dependent on allowable base claims

CONCLUSION

In light of the above-listed amendments and remarks, Applicants respectfully request allowance of the remaining Claims.

The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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